IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SHANMUGAM
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRIMINAL APPEAL NO.100 of 1995

1. Karuppusamy Gounder
2. Mandhirasalam .. Appellants/accused

-Vs-

State rep. by
Inspector of Police
Kamanai (Kenpalayam Police
Station)
Palladam (Crime No.142/93) .. Respondent/complainant

This Criminal Appeal is preferred under S.374 of Code of Criminal Procedure against the judgment of the Principal Sessions Judge, Coimbatore dated 12.12.1994 in S.C.No.136/94.

!For Appellants : Mr.K.V.Sridharan for A-2
A-1 dead

^For Respondent : Mr.V.M.R.Rajendran
Additional Public Prosecutor

:JUDGMENT

M.CHOCKALINGAM, J.

The appellants 1 and 2 have assailed the judgment of the Principal Sessions Judge, Coimbatore finding A-1 guilty under S.302 read with S.34 of I.P.C. and A-2 under S.302 of I.P.C. and awarding them life imprisonment.
2. In the trial court, a charge under S.302 of I.P.C. was framed against A-2, while a charge under S.302 read with S.34 of I.P.C. was framed against A-1 alleging that they caused the instantaneous death of one Nayagam, the first wife of A-1, and in that course, A-1 hit the deceased with stones on her head, while A-2 stabbed her with a knife on different parts of the body.
3. Short facts of the prosecution case can be stated thus:
P.W.2 Subbathal was living at Puthukaaduthottam. The deceased Nayagam, the daughter of P.W.2 was given in marriage to A-1 25 years before the occurrence, and the marriage was dissolved in the year 1980. From the time, the deceased was living with her mother P.W.2 at Puthukaaduthottam.

Both of them owned three acres of land, wherein their house was situated. A-1 owned the adjacent land, situated on the northern side. Though A-1 was residing with his second wife Eswari, the sister of A-2 at Chenjarimalai, he had a thatched shed and also a cattle shed in his land. P.W.2 and her daughter, the deceased Nayagam desired to sell their lands. Knowing the same, the appellants 1 and 2 approached P.W.1 and the deceased and expressed their willingness to purchase the same for a consideration of Rs.30,000/-, to which P.W.2 and her daughter flatly refused. Aggrieved accused sent a notice through a lawyer. Not satisfied with the same, both the accused approached P.W.2 and the deceased, ten days before the occurrence and intimidated them by uttering "if you do not sell the property to us, either you should die or we should die". P.W.1 Santhamani, the granddaughter of P.W.2's sister, who was residing at Malaimandiripalayam, came to the residence of P.W.2 on 10.6.1993 to enquire the health condition of the ailing deceased Nayagam. P.W.1 on request by P.W.2 stayed over that night. The next morning, the deceased Nayagam complained of hypertension. She did not take any food. P.Ws.1 and 2 took their breakfast. On 11.6.1993 at about 11.00 A.M., the deceased Nayagam came out of the house to go for medical treatment at Sulthanpet. P.Ws.1 and 2 also came out of the house to go to Malaimandiripalayam. When all of them came out of the house, the deceased proceeded on the westwards, while P.Ws.1 and 2 walked on the east. Within a few seconds, P.Ws.1 and 2 heard the cry of the deceased and turned back. P.Ws.1 and 2 witnessed A-1 stabbing the deceased at her stomach and the back of the neck with M.O.1 knife. The deceased Nayagam fell down. Immediately, A-2 took M.Os.2 and 3 stones and gave a direct hit on her head. Nayagam met with instantaneous death, as a result of the said injuries. A-1 with knife accompanied by A-2 fled away from the scene of occurrence.

4. P.Ws.1 and 2 on seeing that Nayagam was breathing her last, immediately proceeded to Kurinji Nagar to inform the same to P.W.1's brother. Since he was not available, they came back to the place of occurrence and proceeded to Palladam Police Station. At about 2.30 P.M. when P.W.7 Sivanandam, Sub Inspector of Police was in-charge of the said Police Station, P.W.1 gave Ex.P1 statement which was recorded. On the strength of Ex.P1 complaint, a case was registered in Crime No.1 42 of 1993 under S.302 of I.P.C. against the accused. Ex.P17 Express First Information Report was despatched to the concerned court immediately. On receipt of a telephonic information, P.W.8 Subramaniam, Inspector of Police got a copy of the F.I.R., proceeded to the place of occurrence at about 3.30 P.M., made an inspection and prepared Ex. P4 observation mahazar and Ex.P18 rough sketch. Photographs were taken, which were marked as Ex.P19 (series), and Ex.P20 (series) are the negatives. The Investigation Officer conducted inquest on the dead body of Nayagam between 4.15 P.M. and 7.45 P.M. and prepared Ex.P21 inquest report. He enquired the witnesses and recorded their statements. He sent the dead body of Nayagam for postmortem through P.W.5 Sriraman, a constable with Ex.P2 requisition. On receipt of Ex.P2 requisition, P.W.3 Dr.Narayanasamy attached to the Government Hospital, Palladam commenced and conducted autopsy on the dead body of Nayagam. The Doctor found the following external injuries and the corresponding internal injuries.

1. A lacerated wound of 15 x 7 cm x bone deep over left side of forehead. Fractured frontal bone is seen through the wound.

2. A cut wound with lacerated edges of size 8 x 2 cm x bone deep over left tempero parietal region and another one of size 3 x 1 cm x bone deep over left parietal region just behind left ear.
3. Two incised wounds of size 1 x ½ cm x bone deep over right side forehead.
4. An incised wound of 3 x 2 cm entering into the peritoneal cavity over right side of upper abdomen.
5. An incised wound of 2 x ½ x ½ cm over the lower third of right forearm.
Dissection of injury No.1 – Proxymal half of frontal bone fractured into three fragments all the three were depressed. Right temporal bone was fractured and depressed. Meninges over both frontal and right temporal lobe are injured and lacerated. Both frontal lobes of brain are injured and lacerated.
P.W.3 Doctor issued Ex.P3 postmortem certificate expressing his opinion that the deceased would appear to have died of injury to the brain and the death would have occurred 24 to 30 hours prior to autopsy.
5. In the presence of the witnesses, P.W.8 Investigation Officer recovered M.O.2 Odaikkal, M.O.3 Malaikkal, M.Os.4 and 5 chappals, M.O.13 bloodstained earth, M.O.14 sample earth, M.O.15 sample malaikkal and M.O.16 sample odaikkal under Ex.P5 mahazar. After the postmortem was over, the constable produced the clothes found on the dead body of Nayagam which were recovered under Form 95. Both the accused surrendered before the Court on 14.6.1993. On coming to know about the same, the Investigation Officer made Ex.P22 application before the concerned court on 18.6.1993 for police custody, which was ordered accordingly. The Investigation Officer took both the accused on 21.6.1993 and enquired them in the presence of P.W.4 Aaruchamy and Kalimuthu. Following his confessional statement, A-1 produced M.O.1 knife, M.O.17 leather cover for knife and M.O.18 shirt, and the same were recovered by the Investigation Officer under Ex.P7 mahazar in the presence of the same witnesses. Pursuant to his confessional statement, A-2 produced M.O.19 dhoti, which the Investigation Officer recovered under Ex.P9 mahazar. All the material objects were despatched to the concerned Judicial Magistrate's Court with Ex.P11 requisition to send them for chemical analysis. The Investigation Officer examined P.W.3 Doctor who conducted the autopsy. On completion of the investigation, the Investigation Officer filed a final report against the accused.
6. In order to prove the aforesaid charges, the prosecution has examined 8 witnesses and marked 23 exhibits and 19 material objects. After the evidence on the side of the prosecution was over, the accused was questioned under S.313 of Code of Criminal Procedure, and they denied the versions of the prosecution witnesses. No defence witness was examined. But they marked a registration copy of the sale deed dated 3.11.93 executed by P.W.2 Subbathal in favour of Nithyanandam, the husband of P.W.1 as Ex.D1. After consideration of the rival submissions and scrutiny of the available materials, the learned Sessions Judge found both the accused guilty in accordance with the charges framed against them and awarded life imprisonment as stated above. Hence, this appeal. During the pendency of the appeal, the first appellant died, and on production of the certificate in that regard, which was recorded, the appeal in respect of A-1 stands abated.
7. Arguing for the second appellant, the learned Counsel Mr.K.V. Sridharan made the following submissions.
The prosecution has failed to prove the motive for the accused to commit the heinous crime of murder. P.W.1 is a very close relative, and P.W.2

is the mother of the deceased, and thus, they are interested witnesses. Both the witnesses have deposed that the lands of P.W.2 and the deceased were never leased out to P.W.1 or her husband, which is clearly belied by Ex.D1 sale deed. P.W.1 is more interested, since her husband has subsequently purchased the lands of P.W.2 under Ex.D1. From the inconsistent versions of P.Ws.1 and 2, it could be seen that they could not have present at the time of occurrence. The conduct of P.Ws.1 and 2 in not going near the deceased and not touching the dead body would only show that they could not have been present at the time of occurrence. Their conduct before and after the alleged occurrence would indicate that they would not have been present. If P.W.1 had come to enquire about the health of the deceased and the deceased was suffering by hypertension, P.Ws.1 and 2 could not have allowed her to take medical treatment that morning. P.W.1 did not ask to which hospital the deceased wanted to go for treatment. In order to go to Malaimandiripalayam, where P.Ws.1 and 2 desired to go and to go to the hospital situated at Sulthanpet, all the three should get their bus only at Chenjarimalai. If so, they could not have moved in different directions, which would also throw a doubt whether P.Ws.1 and 2 were available at the time of occurrence. If the accused really intended to kill the deceased, they would have committed the same during night hours, and they could not have chosen day time that too in the presence of witnesses. Even after the occurrence, according to P.Ws.1 and 2, they did not raise alarm, but leaving the dead body, both of them went to P.W.1's brother's house at Kurunji Nagar and went to the Police Station. The prosecution has not examined any independent witnesses. P.Ws.1 and 2 have made deliberate development in their evidence by stating that Nayagam did not have any food that morning, since the postmortem certificate would reveal that the stomach was found empty. The medical evidence did not support the ocular testimonies of the witnesses. A-2 has been purposefully added, since he happened to be the brother-in-law of A-1. There was all possibility that the same person could have attacked the deceased both with knife and stones. The evidence adduced by the prosecution for the confession of the accused and the recovery of the material objects was highly unbelievable. It is pertinent to note that the same has been done after taking custody of the accused from the judicial custody. The evidence available did not connect the second appellant with the crime in question. Hence, the judgment of the lower court has got to be set aside, and the second appellant be acquitted.

8. The learned Additional Public Prosecutor Mr.V.M.R.Rajendran in his sincere attempt to sustain the judgment of the court below would submit that the prosecution has proved the motive of the accused for committing the crime; that P.Ws.1 and 2 who are the only eyewitnesses, have been examined; that they have given clear and clinching evidence as to the commission of the crime by the accused; that the medical evidence through P.W.3 Doctor and the postmortem certificate issued by him under Ex.P3 has thoroughly supported the evidence of the witnesses; that both the accused have given confessional statements leading to the recovery of the material objects, and the same has been proved through proper evidence; that all the material objects have been subjected to chemical analysis, and the reports received therefrom have also strengthened the truth of the prosecution case; that it is true that there are minor discrepancies, which will not in any way affect the truth of the prosecution case; that when the eyewitnesses stood nearby and have clearly seen the overt acts committed by the second appellant and the medical evidence stands to the

effect that the external injury No.1 found on the skull and the corresponding internal injury would have been caused by M.Os.2 and 3 stones, it would be futile on the part of the second appellant to state that he did not participate in the commission of the crime, and thus, the lower court was perfectly correct in finding the second appellant also guilty of the charges, and therefore, the appeal has got to be dismissed.

9. Admittedly, the deceased Nayagam was the first wife of A-1. After divorce, she was living with her mother P.W.2 in her residence at Pudhukaaduthottam. The said house was situated in three acres of land owned jointly by P.W.2 and the deceased. After separation, A-1 married one Eswari, the sister of A-2 and was living at Chenjarimalai. It is not in dispute that A-1 owned three acres of land on the northern side of the landed property of P.W.1 and the deceased Nayagam. According to the prosecution, on coming to know about the desire of P.W.2 and her daughter Nayagam to sell their property, A-1 and A-2 approached them and offered to purchase the same for Rs.30,000/-, but they flatly refused, and A-1 has also issued a notice through his lawyer. It is true that the said notice was neither recovered nor produced by the Investigation Officer. However, all the above facts though spoken to by P.Ws.1 and 2, were not denied in the cross examination. During the relevant period, the deceased Nayagam was living with her mother P.W.2. P.W.2 has categorically deposed that 10 days prior to the occurrence, both A-1 and A-2 appeared and threatened them that they should sell the property only to them, and if not, they were to face the dire consequences. Thus, the prosecution has proved that both A-1 and A-2 had grouse against the deceased Nayagam during the relevant time.

10. The central evidence against the appellants consisted of the testimony of P.Ws.1 and 2 who were the eyewitnesses. P.W.1, a close relative of the deceased, who came to the house of the deceased to enquire about her health, the previous evening, stayed over that night. Admittedly, during the relevant period, the deceased Nayagam was living with her mother P.W.2 in the residence situated at Pudhukaaduthottam, in front of which the occurrence has taken place. Both witnesses have categorically spoken to the fact that they witnessed A-1 stabbing the deceased on her stomach and neck, and on her falling down, A-2 gave a direct hit on her head twice with stones. Taking into consideration that both the witnesses were very well available very near to the place of occurrence, they could have well seen the occurrence. The contention of the appellants' side that both the witnesses are interested since they are close relations of the deceased; and that they could not have witnessed the occurrence cannot be countenanced. With a view to satisfy the judicial conscience, this Court perused the evidence of the said witnesses and is of the considered view that their evidence inspires the confidence of the court. It is true that the deceased was closely related to the eyewitnesses. But their testimonies cannot be discarded simply on the ground that the same is otherwise convincing and consistent. It is pertinent to note that neither the deceased nor the eyewitnesses could have got any animosity giving rise to the possibility of their attempt to rope in both the accused and in particular the second accused, for the commission of the crime. Even mere existence of animosity cannot form basis for rejecting or discarding the testimonies of the eyewitnesses, while their evidence is consistent and convincing. But, in the instant case, the circumstances do indicate that the accused had grouse against the deceased and P.W.2 and not otherwise.

11. A perusal of Ex.D1 sale deed would show that the said landed property of P.W.2 and the deceased was sold to the husband of P.W.1 on 3 .11.1993, which was subsequent to the date of occurrence. The said sale deed also contains a recital stating that the said immovable property was leased out to the husband of P.W.1 for a period of five years, and he was in possession of the same for the past two years before the date of the sale deed. It is true that both P.Ws.1 and 2 have stated that the said property was never leased out to P.W.1 or her husband. The court is of the view that probably the recitals that the property was leased out for a period of five years and P.W.1's family was in possession for the past two years prior to the occurrence would have been included in the sale deed to protect both the property and the possession from any kind of encumbrance what they would have anticipated from the accused. From the above documentary evidence, it cannot be stated that P.Ws.1 and 2 are liars, and their evidence could not be believed.

12. P.W.3 Medical Officer who conducted the autopsy on the body of the deceased, found a bone deep lacerated wound over the left side of the forehead, and a fractured frontal bone was seen through the wound. That apart, the Medical Officer has seen four cut injuries on the dead body of Nayagam. During the internal examination of the injury No.1 the Medical Officer found a fracture in the skull. P.W.3 has opined that the external injury No.1 and the corresponding internal injury leading to the injury to the brain have caused the death of the person, and the said injuries would have been caused by M.Os.2 and 3 stkones. Thus, the medical evidence adduced has fully corroborated the ocular evidence.

13. On a requisition by the Investigation Officer under Ex.P11, all the material objects recovered from the place of occurrence and from the dead body of Nayagam and the material objects produced by the accused following their confessional statements were sent to the laboratory for chemical analysis. M.O.19, dhoti worn by the second appellant/A-2 at the time of the occurrence and M.Os.2 and 3 stones with which A-2 attacked the deceased, contained the same group of blood, as found in the other material objects. Thus, the scientific evidence also has supported the case of the prosecution.

14. No material is available to hold that the death of Nayagam was caused at 6.00 A.M. and not at 11.00 A.M. as put forth by the defence. The Court is unable to agree with the appellants' side stating that there was delay in lodging the complaint; and that it also remained unexplained, in view of the fact that the occurrence has taken place by 11.00 A.M., and the police station was situated about 10 kilometers away from the place of occurrence. It is pertinent to note that the First Information Report has reached the Court in an hour from the time of registration of the case. It is true that P.Ws.1 and 2 after knowing the fact that the deceased was suffering from hypertension, did not attempt to accompany her to the hospital. From the evidence of the witnesses, it could be seen that the deceased took a tablet that morning, and her health was not under serious condition, which compelled the witnesses to accompany her. After the occurrence was over, both P.Ws.1 and 2 went to Kurinji Nagar to inform P.W.1's brother, leaving the dead body of Nayagam at the place of occurrence. Taking into consideration that both the witnesses, who were womenfolk, should have left the place because of the psychic fear entertained by them. The Court is of the view that these circumstances cannot in any manner take away the rigour or truth of the

prosecution case. Thus, the Court is unable to see any merit in the contentions put forth by the second appellant's side.

15. From the evidence it would be clear that A-2 also accompanied A-1 and threatened the deceased and P.W.2 just 10 days prior to the occurrence. It is pertinent to note that A-2 was a native of a village situated 3 or 4 kilometers away from the place of occurrence, and he has accompanied A-1 to the place of occurrence and joined A-1 in attacking the deceased with M.Os.2 and 3 stones, which has directly resulted in the instantaneous death of the deceased. This would be clearly indicative of the fact that by doing the murderous attack, it should have been well within A-2's knowledge that the injury inflicted by him would likely to cause the death of the person. Thus the act of A-2 warrants punishment under S.302 of Indian Penal Code. The Court is unable to see any reason to interfere in the conviction or the sentence imposed by the court below, but is in complete agreement with the view taken by the lower court.

16. In the result, this criminal appeal is dismissed confirming the judgment of the lower court. The learned Principal Sessions Judge, Coimbatore shall take steps to commit A-2 to prison, if he is on bail, to undergo the remaining period of sentence.

Index: Yes (P.S.M.J.) (M.C.J.)
Internet: Yes 11-9-2002

To:
1. The Principal Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Palladam.
3. The Judicial Magistrate, Palladam,
Through The Chief Judicial Magistrate, Coimbatore.
4. The Public Prosecutor, Madras.
5. The Superintendent, Central Prison, Coimbatore.
6. The Inspector of Police, Kamanaickam Palayam Police Station, Palladam.
7. The District Collector, Coimbatore.
8. The Director General of Police, Chennai 4.

nsv/

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